

**CHAPTER NO. 418**

**SENATE BILL NO. 1874**

**By Kyle**

**Substituted for: House Bill No. 1991**

**By McMillan, Langster, Fitzhugh, Michael Turner**

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 5; Title 6; Title 7; Title 8; Title 9; Title 12; Title 16; Title 30; Title 36; Title 39; Title 40; Title 45; Title 47; Title 48; Title 55; Title 56; Title 57; Title 61; Title 62; Title 67; Title 68; Title 69; Title 70 and Title 71, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-1004, is amended by repealing subsection (c) in its entirety and by relettering the remaining subsection accordingly.

SECTION 2. Tennessee Code Annotated, Section 67-4-1005, is amended by repealing subsection (b) in its entirety.

SECTION 3. Tennessee Code Annotated, Section 67-4-709, is amended by adding the following as a new subsection:

( ) Notwithstanding language of Section 14(i) of Chapter 856 of the Public Acts of 2002, the business tax rate changes and other provisions contained in Section 9 of Chapter 856 of the Public Acts of 2002 shall apply only to amounts derived from transactions occurring on or after September 1, 2002.

SECTION 4. Tennessee Code Annotated, Section 4-18-103(f), is amended by deleting the words "the Internal Revenue Code" and substituting instead the words "any statute applicable to any tax administered by the Department of Revenue".

SECTION 5. Tennessee Code Annotated, Section 67-3-1501, is amended by deleting the word, punctuation and number "three (3)" in the second sentence of subsection (b) and substituting instead the word, punctuation and number "four (4)".

SECTION 6. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new section:

(a) A credit shall be granted in the manner provided below for the amount of the sales tax due on tobacco buydown payments included in the sales price of tobacco sold at retail.

(b) The credit shall apply such that sales tax is owed on the sales price of the tobacco less the tobacco buydown payment associated with such sale.

(c) For purposes of this section the following definitions apply:

(1) "tobacco buydown payment" means the amount due to the retailer pursuant to a tobacco buydown agreement; and

(2) "tobacco buydown agreement" means an agreement whereby an amount whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco sold at retail that requires the retailer to reduce the sales price of the product to the purchaser without the use of a manufacturer's coupon or redemption certificate.

SECTION 7. Tennessee Code Annotated, Section 67-4-1708, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c) All persons who were licensed or registered to engage in a vocation, profession, business, or occupation subject to this tax on June 1, 2003, but who were previously exempt from the tax because of the operation of Section 7(b) of Chapter 856 of the Public Acts of 2002, are hereby declared to be liable for the tax imposed by this part, which shall be due and payable on June 30, 2003.

SECTION 8. Tennessee Code Annotated, Section 67-4-1709, is amended by deleting the language of that section in its entirety and substituting instead the following:

(a) Each individual licensed or registered to engage in a vocation, profession, business, or occupation listed in § 67-4-1702(a) shall be liable for the tax. Any employer, including any governmental entity, may choose to remit the tax imposed by this part on behalf of persons subject to the tax who are employed by such employer.

SECTION 9. Tennessee Code Annotated, Section 67-1-1438, is amended by adding the following sentence at the end of subsection (b):

No claim, cause of action or other proceeding to challenge an assessment or seek a refund shall arise based on the department's procedures for signing or recording the liability of the taxpayer in the office of the department under this section, regulations promulgated thereunder, or bulletins related thereto.

SECTION 10. Tennessee Code Annotated, Section 67-4-2004(2)(A)(iii), is amended by adding the following as a new subdivision immediately after the existing subdivision (f) and relettering the remaining subdivisions accordingly:

"(g) The holding of participation loans in which more than one (1) lender is a creditor to a common borrower."

SECTION 11. Tennessee Code Annotated, Section 67-4-2105, is amended by deleting the words and punctuation "except for a financial institution included in a unitary group of financial institutions otherwise subject franchise and excise taxes," immediately after the words and punctuation "Notwithstanding any other provision to the contrary," in subsection (f).

SECTION 12. Tennessee Code Annotated, Section 67-4-2004(8), is amended by deleting the language in subdivision (8) in its entirety and by replacing it with the following new language:

"Financial institution" means a holding company, any regulated financial corporation, a subsidiary of a holding company or a regulated financial corporation, an investment entity that is indirectly more than 50% owned by a holding company or a regulated financial corporation, or any other person that is carrying on the business of a financial institution. However, "financial institution" does not include insurance companies subject to tax under §§ 56-4-201 through 56-4-214;

SECTION 13. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new subdivision immediately after the existing subdivision (12) and renumbering the remaining subdivisions accordingly:

"Investment entity" means any person that receives more than 50% of its gross income from investment securities and from the business of a financial institution;

SECTION 14. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new subdivision immediately after the existing subdivision (13) and renumbering the remaining subdivisions accordingly:

"Investment securities" means for purposes of this section any note, United States treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate debt securities, participations in securities backed by mortgages held by the United States or state government agencies, loan-backed securities, bonds, debenture, evidence of indebtedness, and other similar debt investments;

SECTION 15. If any provision of this act or the application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared severable.

SECTION 16. (a) Section 6 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all taxes assessed on or after January 1, 2002.

(b) Section 7 and 8 of this act shall take effect upon becoming a law, the public welfare requiring it. Section 7 is repealed effective September 1, 2003.

(c) Section 9 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all currently pending or future suits except for those currently pending suits in which a challenge to the assessment based on the department's recording procedures was specifically alleged in either the plaintiff's complaint, interrogatories, requests for production of documents, or requests for admissions prior to May 1, 2003.

(d) Sections 10 through 14 shall take effect upon becoming a law, the public welfare requiring it, and shall apply to the period beginning January 1, 2003.

(e) All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 29, 2003

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 24<sup>th</sup> day of June 2003

  
PHIL BREDESEN, GOVERNOR